

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:12-cr-245-T-27AAS

ALEXANDER SHEVGERT

ORDER

BEFORE THE COURT is Defendant Shevgert's "Request to Set Aside/Vacate Conviction/Sentence for Lesser Included Offense," construed as a motion under 28 U.S.C. § 2255. (Dkt. 89). No response is necessary. The construed § 2255 motion is **DISMISSED**.

As noted in the order dismissing his prior § 2255 motion, Shevgert stands convicted of using a facility of interstate commerce with intent that a murder for hire be committed (Count One), and soliciting the commission of a crime of violence (Count Two). (Dkt. 59); *see also* (Dkt. 88 at 1). He filed a "Motion Relief from Judgment or Order [Federal Rule of Civil Procedure 60(b)(5) & (6)]." (Dkt. 61). Consistent with *Castro v. United States*, 540 U.S. 375 (2003), he was notified that the motion would be recharacterized as a § 2255 motion, that future § 2255 motions would be subject to the restrictions on second or successive motions, and that he had an opportunity to withdraw the motion. (Dkt. 63 at 3-4). He did not withdraw the motion, which was denied as untimely and without merit. (Dkts. 67, 68, 72). *See* Case No. 8:16-cv-1072-T-27AAS, ECF: 13 (M.D. Fla. May 14, 2019). In his subsequent "Request for Facts Underlying Elements of Crimes of Conviction," he sought to vacate his convictions "due to actual innocence and the lack of

jurisdiction, considering the lack of a factual basis for the charges.” (Dkt. 86 at 1, 7). The request was construed as a § 2255 motion and dismissed as second or successive. *See* (Dkt. 88).

Shevgert now requests that “this Court set aside or vacate his conviction and/or sentence for the lesser included offense (Count 2) of his principal charge (Count 1).” (Dkt. 89 at 1). Specifically, he contends that his “charges are identical – as are the underlying facts – except for the alleged payment as an additional Count One element,” and that, under the double jeopardy clause, his conviction on the “greater/lesser included offense” cannot be sustained. (Id. at 2-3).

Because Shevgert seeks to vacate his convictions and set aside his sentence based on a constitutional challenge, the motion is recharacterized as a § 2255 motion. *See Zamor v. United States*, 827 F. App’x 939, 945 (11th Cir. 2020) (citations omitted). Following notice and an opportunity to withdraw pursuant to *Castro*, his original § 2255 motion was denied on the merits. Accordingly, without authorization from the Eleventh Circuit, this Court lacks jurisdiction to consider his successive motion, which is due to be dismissed. *See Barbary v. United States*, 769 F. App’x 888, 890 (11th Cir. 2019); *Boykin v. United States*, 592 F. App’x 809, 812 (11th Cir. 2014) (finding that denial of § 2255 motion as untimely renders subsequent motion second or successive).¹ The motion is otherwise denied.

In summary, Defendant Shevgert’s construed § 2255 motion (Dkt. 89) is **DISMISSED**.

DONE AND ORDERED this 18th day of May, 2021.

/s/ James D. Whittemore

JAMES D. WHITTEMORE
United States District Judge

Copies to: Defendant, Counsel of Record

¹ A certificate of appealability is not required to appeal the dismissal of a § 2255 motion as second or successive. *See United States v. Casado*, 819 F. App’x 788, 790 (11th Cir. 2020) (citations omitted).